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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

MARK AGUILERA,

Plaintiff and Appellant,

v.

EL TORITO RESTAURANTS, INC.,

Defendant and Respondent.

G040973

(Super. Ct. No. 07CC08657)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, H.  
Warren Siegel, Judge. Appeal dismissed.

Center for Disability Access and Russell C. Handy for Plaintiff and  
Appellant.

Call, Jensen & Ferrell, Scott J. Ferrell and Scot D. Wilson for Defendant  
and Respondent.

The trial court granted defendant El Torito Restaurants, Inc.’s motion for judgment on the pleadings on plaintiff Mark Aguilera’s cause of action under the California Disabled Persons Act on the ground it was barred by the one-year statute of limitations under Code of Civil Procedure section 340, subdivision (a). It dismissed plaintiff’s Americans with Disabilities Act cause of action “without prejudice pursuant to the parties[’] stipulation on the record” and entered judgment for defendant. Plaintiff contends the court erred in granting the motion for judgment on the pleadings.

At oral argument, we requested supplemental briefing on the issue of whether the appeal should be dismissed for lack of jurisdiction under *Don Jose’s Restaurant, Inc. v. Truck Insurance Exchange* (1997) 53 Cal.App.4th 115, which held that parties may not avoid the one final judgment rule by stipulating to dismiss a cause of action without prejudice in order to create an appealable final judgment. (*Id.* at pp. 118-119.) Plaintiff concedes that under *Don Jose’s Restaurant* no final judgment exists at this time and that consequently this court has no appellate jurisdiction.

The appeal is dismissed. The parties shall bear their own costs on appeal.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

MOORE, J.

IKOLA, J.